(1)

Supreme Court, U.S.
FILED

No. 01589 APR 13 2001

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Ray Sienkiewicz,

Petitioner,

v.

Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Is this case of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court?

II

When a well-informed reasonable person would believe that all of the lower federal courts are subject to sufficient extrajudicial influence as to appear incapable of impartial review of five related cases of great national importance, is a writ of certiorari is needed to avoid the appearance of impropriety?

III

Should a petitioner be allowed to amend his complaint to comply with all essential requirements for pleading a F.A.C.E. cause of action which requirements were substantially revised by a Court of Appeal's related-case decision occurring after the filing of the complaint in this case?

PARTIES TO THE PROCEEDING

"Petitioner"

Ray Sienkiewicz

"Respondents"

Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack

RELATED PETITIONS ALREADY FILED

Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc., et al., Supreme Court Number: 00-1268.

Jane Roe, II v. Aware Woman Center For Choice, Inc., et al., Supreme Court Number 00-1301.

Meredith T. Raney, Jr. v. City of Melbourne, Florida, Supreme Court Number 00-1350.

Ray Sienkiewicz v. John McDougall, individually, et. al., Supreme Court Number: 00-1365.

Ray Sienkiewicz v. Larry Hart, individually, et al., Supreme Court Number 00-1419.

Ray Sienkiewicz v. John McDougall, individually, et al., Supreme Court Number 00-1498

TABLE OF CONTENTS

Questions Presented i

Parties To The Proceeding ii

Table of Contents iii

Appendix Table iv

Table of Citations v

Opinions Below 1

Statement of Jurisdiction 1

Statutory Provisions Involved 2

Statement of the Case

A. Background 4

B. The Case Itself 7

C. Related Cases 9

D. The Proceedings Below 10

Reasons for Granting the Writ

I. This case is of such public importance that it justifies deviation from normal appellate practice and requires immediate determination in this Court. 10

II. A well-informed reasonable person

would believe that all of the lower federal courts are subject to sufficient extrajudicial influence as to appear incapable of impartial review of five related cases of great national importance and so a writ of certiorari is needed to avoid the appearance of impropriety in those federal courts..... 12

III. The petitioner should be allowed to amend his complaint to comply with all essential requirements for pleading a cause of action under F.A.C.E., which requirements were substantially revised by a Court of Appeals related case decision in a related case occurring after the filing of the complaint in this case..... 15

Conclusion..... 16

Appendix Table

Appendix A..... 1a

Order of the United States District Court, Middle District of Florida, Ft. Myers Division, granting various motions to dismiss, with prejudice, filed March 22, 2001.

Appendix B..... 8a

Docketing letter from the Court of Appeals, Eleventh Circuit, dated April 9, 2001

TABLE OF CITATIONS

Cases:	Page
Adams v. Family Planning Assoc. 733 N.E. 2d 766 (Ill. App. 2000)	12
Cheffer v. Reno, 55 F.3d 1517 (11th Cir. 1995)	14
Conley v. Gibson, 355 U.S. 41 (1957)	15
Doe v. Bolton, 35 L.Ed. 2d 201 (1973)	4
Liteky v. United States, 114 S.Ct. 1147 (1994)	14
Madsen v. Women's Health Center, Inc., 114 S.Ct. 2516 (1994)	14
Marsh v. Alabama, 326 U.S. 501, 66 S.Ct. 276 (1946)	14
Planned Parenthood v. Casey, 112 S.Ct. 2791 (1972)	16
Raney v. Aware Woman Center For Choice, Inc., Supreme Court number 00-1268	7, 13, 15
Raney v. Aware Woman Center For Choice, Inc., 224 F.3d 1266 (11th Cir. 2000)	14
Raney v. City of Melbourne, Florida, Supreme Court number 00-1350	13

Roe v. Wade, ... 14
35 L.Ed. 2d 147 (1973)

Roe II v. Aware Woman Center For Choice, ... 4, 12
Inc., Supreme Court number 00-1301

Schenck v. Pro Choice Network, ... 6, 14
519 U.S. 357 (1997)

Sienkiewicz v. Hart, et al., ... 13
Supreme Court number 00-1419

Sienkiewicz v. McDougall, et al., ... 13
Supreme Court number 00-1365

Sienkiewicz v. McDougall, et al., ... 13
Supreme Court number 00-1498

Stenberg v. Carhart, ... 14
147 L.Ed. 743 (2000)

United States v. Nixon, ... 11
418 U.S. 683 (1974)

Statutes

18 U.S.C. § 248 (F.A.C.E.) 1,2, 9, 14

28 U.S.C. §1254(1) 2

28 U.S.C. §1291 1

28 U.S.C. §1331 1

28 U.S.C. §1343 1

28 U.S.C. §1391(b) 1

28 U.S.C. §2101(e) 2

Petitioner, Ray Sienkiewicz, respectfully requests that a writ of certiorari be issued to review this case in which no judgment has yet been rendered by the United States Court of Appeals, Eleventh Circuit.

OPINIONS BELOW

The order of the district judge of the District Court in *Ray Sienkiewicz v. Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack*, Case Number 2:00-CV-57-FtM-29DNF is shown at Appendix A. The letter from the clerk of the United States Court of Appeals for the Eleventh Circuit, showing that the appeal has been docketed in *Sienkiewicz v. Hart, et al.*, Case Number: 01-11774-J is shown as Appendix B.

STATEMENT OF JURISDICTION

Ray Sienkiewicz filed an action for violation of his civil rights under 18 U.S.C. §248 (Freedom of Access to Clinic Entrances Act) in U.S. District Court, Middle District of Florida, Fort Myers Division pursuant to 28 U.S.C. §1391(b), because the claim arose in that district and also because some of the defendants reside in that district. There is federal jurisdiction because this claim arises under the laws of the United States according to 28 U.S.C. §1331. Additionally, since this is an action to recover damages under an Act of Congress providing for the protection of civil rights, jurisdiction was proper in the district court, under 28 U.S.C. §1343(a)(4).

An appeal was taken to the United States Court of Appeals, Eleventh Circuit, under the authority of 28 U.S.C. §1291.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Because judgment has not yet been rendered in the Court of Appeals, Ray Sinekiewicz relies also on 28 U.S.C. §2101(e) for jurisdiction.

STATUTORY PROVISIONS INVOLVED

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
>
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies.** -
>
> **(1) Right of action**.-
>
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to
>
> obtain, services in a facility that provides reproductive health services . . .
>
> **(e) Definitions.**- As used in this section:
>
> **(1) Facility.**- The term "facility" includes a hospital, clinic, physicians office, or other

facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(5) Reproductive health services.- The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

A. Background.

Few members of the pro-life community are now found at abortion facilities. This case helps to explain why.

In the years following *Roe v. Wade* and *Doe v. Bolton*, there was an expectation that abortion was a temporary institution. That was a false hope.

Those who consider themselves to be pro-life have generally been that part of society that distanced themselves from "street activities". The black civil rights champions and Vietnam protestors, the labor unionists and animal rightists, marched to a different drummer.

There had always been a core, though, in the pro-life community which had involved themselves in caring for unmarried pregnant girls who were socially ostracized. And as information about the need to protect physically abused women - pregnant or not - surfaced, an increasing number of those sensitive to young women's needs began to volunteer their services at the resulting shelters.

The origin of the first crisis pregnancy center is relatively recent. These facilities are distinct from the shelters for abused women and from the more traditional homes for unwed mothers. Yet the clientele was often interchangeable. So many young women, victims of adverse circumstances, of deceit and of rampant violence, found themselves in desperate straits. Often they were pregnant, unmarried and physically abused - all at the same time.

The people who tried to assist them were usually

volunteers, often with few financial resources. The little money they could spare went for food, clothing and shelter for these girls. Advertising was a luxury they could not afford, and quite often these operations had no legal zoning. Word of mouth sufficed - poorly - to spread information about these services and their whereabouts.

The abortion clinics, on the other hand, were fueled by profit motives - not charity. It was good business practice to spend freely on extensive advertising budgets. And they did so.

Consequently, many girls could find the abortion clinics while searching for a solution to their crisis pregnancies. Yet alternatives which may have been more desirable were unknown.

With the advent of the rescue movement, more concerned pro-life people were exposed to the problems and shortcomings of abortion facilities. They may have come to protest - but they stayed to help the women. They found that the pregnant girls often did not know that they were being brought to a clinic for an abortion: this "choice" was not theirs but often that of the male responsible for their pregnancy who wanted the cheapest, easiest way out - for himself.

Often these girls had no knowledge of the practices at the particular facility which might be sadistic or unsanitary. That AIDS might be the fatal souvenir of their visit to a slovenly abortionist is not something these girls were warned of by the abortion workers.

The crisis pregnancy centers (CPC's) learned that their volunteer workers often lacked the training needed to best help the young women who were the clientele. Standardized courses were developed to cure this problem.

Meanwhile, the pro-life counselors were developing their skills "on the job" in abortion facilities. Like Meredith Raney, some of them enrolled in the crisis pregnancy counseling courses. Much of the CPC information and training was useful in abortion facilities.

The increase in pro-life counseling coincided with the success of F.A.C.E. in curtailing the mass rescues at the abortion clinics, where large numbers of people had sat in the doorways of abortion clinics.

Post-F.A.C.E., there were some demonstrators, protestors and those in prayer at abortion clinics but no more rescues. This change worked to the advantage of the pro-life counselors.

With the experience acquired on the street and at CPC training, these counselors found that their effectiveness increased when quiet, private conversations could be had with the distraught girls. Tales of the threats and dangers to which the girls were subject often were conveyed in whispers. The taking of written referral information by the girls was done furtively . Questions about the hazards at the particular facility were asked in the softest of voices. Answers were given just as quietly.

Experienced pro-life counselors applauded the decision of this Court four years ago in *Schenck v. Pro Choice Network*, 519 U.S. 357 (1997). In that case, standards were set for pro-life counseling at abortion clinic entrances. The well-meaning but sometimes harmful efforts of protestors were restricted territorially in that case so that these counselors had the space for the private conversations that were so desperately needed by the pregnant girls.

Not long after the *Schenck* (*supra*) ruling, Ray

Sienkiewicz enrolled in and completed one of the first courses designed specifically to train pro-life referral counselors. He also joined R.E.A.C.H. (Referral, Educational, And Counseling Help), the association of pro-life referral counselors, and committed himself to its standards of professionalism. Its credentials accompanied him first to the Azima abortion clinic with which he was associated for about two years, serving there with love and courage.

After the respondents, Clinton, Reno, and Wilson ended the service of the pro-life counselors in the Azima facility, Ray Sienkiewicz became affiliated with the Ft. Myers Women's Health Center abortion facility. His service there was brief. The violations of his civil rights to offer referral and counseling services in a lawful and loving manner there occurred soon after he started. It has been the desperate pregnant girls, though, who have suffered most because of these wrongs. At least one has been killed.

B. The Case Itself.

In December, 1998, the abortion industry became upset when a federal district judge in Orlando, Florida refused to issue summary judgment for the abortion facility in the related case of *Raney v. Aware Woman Center For Choice, Inc.*, Supreme Court number 00-1268, and pressured the Clinton Administration to stop any federal protection of pro-life referral counselors at the entrances of abortion clinics.

Charles Wilson, then the United States Attorney for the Middle District of Florida, reportedly advised Attorney General Janet Reno that the pro-life referral counselors were not violating any laws and were evidently protected under F.A.C.E.

Despite this legal opinion, then-President Clinton, then-

Attorney General Reno and then-United States Attorney Wilson developed a political solution to stop the pro-life referral counselors. These three people decided to use local police officers, with the help of local abortion facility personnel, to threaten and intimidate the pro-life referral counselors.

In the spring of 1999, then-President Clinton agreed to appoint then-United States Attorney Wilson to the United States Court of Appeals for developing this program by which various United States Attorneys would obtain the cooperation of local police officials, such as Larry Hart, the Police Chief of Ft. Myers, Florida and John McDougall, then the Sheriff of Lee County, Florida, to intimidate pro-life referral counselors when requested by abortion facility personnel, such as Jill Babyack. The appointment of Wilson as an appellate judge would, in turn, ensure the success of this program when challenged in court.

The motivation of the respondents was to prevent pro-life referral counselors, such as Ray Sienkiewicz from providing their reproductive health services in abortion facilities. Their agreement was a political and economic favor to the abortion industry, an important ally of the Clinton Administration. Thus, Clinton, Reno and Wilson were acting solely in the political arena and not within the scope of their official capacities.

The specific claim in this case involved the abortion facility in Ft. Myers, Lee County, Florida, called the Ft. Myers Women's Health Center, Inc. There, Ray Sienkiewicz provided referral information and counseling in that facility. (The term "facility" includes the walled-in clinic area as well as the parking area and the access-egress sidewalk connecting those parts of the building.) He stood near the entranceway, on the sidewalk, in a nonthreatening, non-obstructive manner.

Some of the information about local resources available to distraught young women trying to cope with crisis pregnancies was contained in written brochures which he handed out.

On October 21, 1999 and thereafter, the respondents caused Ray Sienkiewicz to be intimidated and threatened with physical removal from within the boundaries of that facility by use of an armed Ft. Myers policeman. Thus he was prevented from providing his F.A.C.E.-defined services. Ray Sienkiewicz continues to fear, reasonably, that he remains threatened by the respondents; further, he estimates that 50 violations have occurred each week.

C. Related Cases.

There are a total of five cases which are closely related, each of which have resulted in one or more petitions for a writ of certiorari to this Court.

All of these cases originated in the Middle District of Florida, three from the Orlando division, while the remaining two cases were filed in Fort Myers. The Orlando division cases were all assigned to Judge Fawsett, the Fort Myers cases were assigned to Judges Nimmons and Steele.

Four of the cases seek federal protection for pro-life referral counselors working in abortion facilities. The fifth case claims federal protection for a patient at an abortion clinic. The congressional act which affords protection is Freedom of Access to Clinic Entrances Act (F.A.C.E.) 18 U.S.C. §248.

The consequences to the best known of the defendants/respondents, William J. Clinton, Janet Reno, and Charles Wilson, for the F.A.C.E. violations increased with the reported death last August of a mother of two from

mistreatment at the Azima facility. F.A.C.E. calls for imprisonment for up to life when a death occurs as a result of its violation.

D. The Proceedings Below.

After filing, but before serving, his original complaint, Ray Sienkiewicz filed an amended pleading in the Fort Myers division of the Middle District. He sued three top federal officials plus the local chief of police and the abortion facility manager, all as private individuals.

Initial activity concerned the magistrate and his refusal to withdraw from the case. This refusal led to an appeal to the United States Court of Appeals, Eleventh Circuit, which dismissed the appeal for a lack of jurisdiction. The appellate court's failure to address the appearance-of-impropriety issue was the main reason for Ray Sienkiewicz seeking a review of that decision in this Court.

The dismissal order was entered on March 22, 2001. The order was final as the district judge ruled the dismissal to be with prejudice. No rehearing was sought. A timely notice of appeal was filed on April 2, 2001. The case was docketed with the Court of Appeals on April 5, 2001.

Without waiting for a decision in the court of appeals, Ray Sienkiewicz brings this petition for writ of certiorari under the terms of Supreme Court Rule 11.

REASONS FOR GRANTING THE WRIT

I

This case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

United States v. Nixon, 418 U.S. 683 (1974), provides a similar scenario in that both that case and the present one involve wrongdoing by our Nation's chief executive and his allies. Both cases were brought before the Supreme Court for review prior to a judgment in the Court of Appeals.

While Nixon is historically credited with great political cunning, his strategic planning pales in comparison with the collective abilities of Clinton, Reno and Wilson. Not only did they plot to thwart unlawfully the love and help of the pro-life referral counselors, they fashioned an escape hatch for themselves which entailed the corrupt influence of the lower federal courts.

Nixon's wrongdoing did not have the premeditated long range planning needed for success: his protection by the federal courts was never secured. Had Nixon been able to predetermine the outcome of legal challenges to his improper activities, his presidency would have lasted longer and ended differently.

Clinton, Reno and Wilson have been far more brilliant, not only in their plan to stop the counselors, but in providing for their own exoneration. They apparently control, or at least influence, the magistrates, the district judges, and the circuit judges in the courts through which these cases have traveled.

The only weakness for this threesome is that they do not control the United States Supreme Court. That is why it is so critical to bring this case before the highest court for review as soon as possible. Millions of young women are affected; thousands of girls are deprived every day of the vital help which pro-life referral counselors can offer them.

The case at hand is far more deserving of review than

was *Nixon* (*supra*) because of the sinister nature in which its victims, who are so often relegated to life's shadows - girls and young women dealing with crisis pregnancies - have been inhumanely deprived of basic resources.

Hundreds of thousands of these young people can now be more readily victimized with unwanted abortions, thanks to Wilson, Reno and Clinton. There will be more deaths such as the one described in *Adams v. Family Planning Assoc. Med. Group, Inc.*, 733 N.E. 2d 766 (Ill. App. 2000), where a 13 year old girl was killed in an "assembly line" abortion.

Thanks to Clinton, Reno and Wilson there will be more brutal injuries such as occurred in the forced abortion case, *Jane Roe, II v. Aware Woman Center For Choice, Inc.*, Supreme Court number 00-1301. The only hope for women such as Jane Roe, II to receive justice is that the Supreme Court will continue to insist that their lives and health be protected. This reaffirmation should be made as soon as possible.

II

A well-informed reasonable person would believe that all of the lower federal courts are subject to sufficient extrajudicial influence as to appear incapable of impartial review of five related cases of great national importance and so a writ of certiorari is needed to avoid the appearance of impropriety in those federal courts.

The district judge in this case was adrift in a sea of judicial impropriety.

The magistrate with whom he shares the federal courthouse in the Fort Myers Division of the Middle District of Florida appears to be receiving money indirectly from the defendant in a closely related, parallel case. Two petitions

concerning the magistrate's refusal to step down in both of these cases have already been brought to the United States Supreme Court. *Ray Sienkiewicz v. John McDougall, individually, et al.*, Supreme Court number 00-1365, and *Ray Sienkiewicz v. Larry Hart, individually, et al.*, Supreme Court number 00-1419.

Fellow district judges in closely related cases have misstated critical facts and engaged in unseemly name-calling of the plaintiffs. *Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc.*, Supreme Court number 00-1268; *Jane Roe, II v. Aware Woman Center For Choice, Inc.*, Supreme Court number 00-1301; *Meredith T. Raney, Jr. v. City of Melbourne, Florida*, Supreme Court number 00-1350; *Ray Sienkiewicz v. John McDougall, et al.*, Supreme Court number 00-1365; *Ray Sienkiewicz v. Larry Hart, et al.*, Supreme Court number 00-1419; *Ray Sienkiewicz v. John McDougall, et al.*, Supreme Court number 00-1498. One of these victims of that judicial abuse is the petitioner herein, Ray Sienkiewicz.

The district judge in this case has been caught up in this apparent spirit of impropriety, infecting the lower courts. Extrajudicial influences seem to have led the present district judge to make the following mistakes:

1. Calling Ray Sienkiewicz an "anti-abortion activist." This is the same appellation which is normally applied to deranged assassins of abortionists and bombers of abortion facilities.

2. Calling Ray Sienkiewicz's referral counseling "anti-abortion counseling". The referral information may save young mothers the horror of an unwanted abortion and other serious problems. However, the purpose of this counseling is not to debate the legality or morality of abortion.

3. Finding that the pleadings show Ray Sienkiewicz not to be "in the facility". The clinic in question occupies a small part of the overall F.A.C.E. facility. Ray Sienkiewicz did not perform his services in the clinic, but rather " in the facility". According to 18 U.S.C. §248 (e)(1) a "facility" includes the building or structure, so the ingress/egress sidewalk and parking area are properly integral parts of the Ft. Myers Women's Health Center facility.

4. Assuming that Ray Sienkiewicz cannot meet the new requirements which have been imposed on F.A.C.E. by the court of appeals in *Meredith Raney v. Aware Woman Center For Choice, Inc.*, 224 F.3d 1266 (11th Cir. 2000). He refused the counselor an opportunity to comply with the new F.A.C.E requirements created by the Eleventh Circuit.

5. Brushing aside the legal consequences of *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995), the challenge to F.A.C.E.'s validity brought against Charles Wilson and Janet Reno, in which case those two convinced the federal court that the commerce clause provided F.A.C.E.'s validity.

6. Rejecting, summarily, the holdings of *Marsh v. Alabama*, 326 U.S. 501, 66 S.Ct. 276 (1946), *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994), and *Schenck v. Pro Choice Network*, 519 U.S. 357 (1997), and the underlying legal philosophy of federal jurisprudence starting with *Roe v. Wade*, 35 L.Ed. 2d 147 (1973) and ending with *Stenberg v. Carhart*, 147 L. Ed 743 (2000).

With Charles Wilson now seated on the bench in the Eleventh Circuit, no well-informed reasonable person would doubt that extrajudicial influences have apparently affected the decision in the district court. *Liteky v. United States*, 114 S.Ct. 1147 (1994), and preclude a favorable decision at the Eleventh Circuit.

III

The petitioner should be allowed to amend his complaint to comply with all the essential requirements for pleading a cause of action under F.A.C.E. which requirements were substantially revised by a court of appeals related-case decision occurring after the filing of the complaint in this case.

Ray Sienkiewicz believes that all of the essential pleading elements of a F.A.C.E. claim are present in his amended complaint and that the order of dismissal was entered erroneously.

Since the filing of this amended complaint, the Court of Appeals has completely rewritten the F.A.C.E. statute. Some of the new requirements which that court has now imposed are listed in: *Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc.*, Supreme Court number 00-1268:

1. "ATTACHED"
2. "CREDENTIALED"
3. "HEALTHCARE"
4. "PROFESSIONALS"
5. "RECOGNIZED"
6. "TRAINED"
7. "UNREGULATED"
8. "VOLUNTEER"

Ray Sienkiewicz should be given the opportunity to amend his present pleading in the event that any of these new requirements are approved by this Court. *Conley v. Gibson*, 355 U.S. 41 (1957). One way or the other, he should be allowed to proceed with his case.

CONCLUSION

Ray Sienkiewicz stands now before this Court.

His head is up. His shoulders are squared.

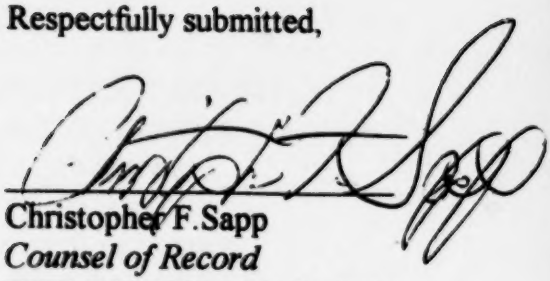
Kindness lights his eyes. That light is brightened by his firm resolve.

In a voice that is soft and gravelly, he reads the covenant made with citizens such as himself, which this Court spread upon the pages of *Casey*:

> Some cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular, or who refuses to work to undermine the decision or force its reversal. The price may be criticism or ostracism, or it may be violence. An extra price will be paid by those who themselves disapprove of the decision's results when viewed outside of constitutional terms, but who nevertheless struggle to accept it, because they respect the rule of law. To all of those who will be so tested by the following, the Court implicitly undertakes to remain steadfast, lest in the end a price be paid for nothing.

Ray Sienkiewicz is respectful and, at the same time, insistent. He has done his part - not for himself - but for all the distraught young women who need love and help in what may truly be their darkest hours. On behalf of these beneficiaries, Ray Sienkiewicz calls on the Court to honor the *Casey* promise. For it to do so, this Court must first review this case.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

Case No. 2:00-cv-57-FtM-29DNF
(Filed March 22, 2001)

RAY SIENKIEWICZ,
Plaintiff,
vs.

LARRY HART, individually, CHARLES WILSON, JANET RENO, individually, WILLIAM J. CLINTON, individually, and JILL BABYACK.,
Defendants.

ORDER

This matter comes before the Court on the following dispositive motion: (1) Defendant Babyak's Motion to Dismiss (Doc. #7) filed June 28, 2000; (2) Defendant Larry Hart's Motion to Dismiss (Doc.#18) filed July 21, 2000; and (3) Defendants Charles Wilson and Janet Reno's Dispositive Motion to Dismiss, or, in the Alternative, for a More Definite Statement (Doc. #40), filed December 5, 2000. Plaintiff filed a Response to each motion to dismiss on July 24, 2000, August 4, 2000, and December 29, 2000, respectively. (Docs. #19, #23, #41).

Plaintiff is an anti-abortion activist who claims protection under the Freedom of Access to Clinic Entrances

Act (FACE), 18 U.S.C. §248. Because the Amended Complaint (Doc. #3), filed June 7, 2000, does not and cannot state a claim upon which relief may be granted, the motions to dismiss will be granted and the Amended Complaint will be dismissed.

I. Motion to Dismiss Standard

In deciding a motion to dismiss, the Court must accept as true all factual allegations in the Complaint. Hughes v. United States, 110 F.3d 765, 767 (11th Cir. 1997); Brown v. Crawford County, Ga., 960 F.2d 1002, 1010 (11th Cir. 1992). The Complaint must be viewed and all reasonable inferences must be made in favor of the plaintiff. Sawinski v. Bill Currie Ford, Inc., 866 F.Supp. 1383, 1385 (M.D. Fla. 1994); citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A Complaint should not be dismissed unless it appears beyond that plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted); Neal v. Fulton County Bd. Of Educ., 229 F.3d 1069, 1072 (11th Cir. 2000), reh'g denied, ___F.3d___ (11th Cir. 2000); Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231-32 (11th Cir. 2000). Federal Rule of Civil Procedure 8 requires only that plaintiff set forth a short and plain statement of the claim that will give defendants fair notice of the claim and the grounds upon which it rests. Conley v. Gibson, 355 U.S. at 47. However, dismissal is warranted under Fed.R.Civ.P. 12(b)(6) if, assuming the truth of the factual allegations of plaintiff's complaint, there is a dispositive legal issue which precludes relief. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Brown v. Crawford County, Ga., 960 F.2d at 1009-10.

II. Factual Allegations

Plaintiff Ray Sienkiewicz (plaintiff or Sienkiewicz) is a "pro-

life referral counselor" who provides or seeks to provide counseling of women and men as to the spiritual, moral, medical, physical and psychological health aspects of adoption and abortion; the nature of this particular [abortion] facility; the needs of the individuals approaching or leaving the facility; and offering written and verbal referral information concerning pregnancy and the termination thereof, especially referral to local resources offering alternative solutions to abortion." (Doc. #3, ¶¶ 29, 34). Plaintiff claims that his activity is protected by FACE, 18 U.S.C. §248, and that defendants violated his rights under FACE.

The crux of plaintiff's factual allegations of misconduct are plead "on information and belief." Plaintiff alleges that in December, 1998, the abortion industry became upset when a federal district court in Tampa, Florida, refused to issue summary judgment for the abortion clinic in a certain case, and pressured the Clinton administration to stop any federal protection of pro-life referral counselors at the entrances of abortion clinics. (Doc. #3, ¶¶ 17, 18). Plaintiff alleges that Charles Wilson, then the United States Attorney for the Middle District of Florida, advised Attorney-General Janet Reno that the pro-life referral counselors were not violating any laws and were evidently protected under FACE. (Doc. #3, ¶ 19). Plaintiff alleges that despite this legal opinion, then-President Clinton, Attorney-General Reno, and then-United States Attorney Wilson developed a political solution to stop the pro-life referral counselors. (Doc. #3, ¶20). Plaintiff alleges that defendants agreed to stop pro-life referral counselors, with the aid of local abortion clinics, by using local police officers to threaten and intimidate the pro-life referral counselors. (Doc. #3, ¶20). Plaintiff alleges that in the Spring of 1999, then-President Clinton agreed to appoint then-United States Attorney Wilson to the United States Court of Appeals for the Eleventh Circuit for developing this program by which various

United States Attorneys would obtain the cooperation of local police chiefs (such as defendant Larry Hart, the police chief of Ft. Myers, Florida) to intimidate pro-life referral counselors when requested by abortion clinic personnel (such as Jill Babyack, an abortion clinic employee) and to ensure the legal and political success of the program. (Doc.#3, ¶21). Plaintiff alleges that the purpose of the program of intimidation was to prevent pro-life referral counselors from performing their services at abortion facilities. (Doc. #3, ¶ 22) This program is alleged to have been a political favor to the abortion industry, "an important political ally of the Clinton Administration." (Doc.#3, ¶22). Plaintiff alleges that defendants were acting "in the political arena" and not within the scope of their official capacity. (Doc. #3, ¶24).

The specific claim in this case involved an abortion clinic in Lee County, Florida, the Fort Myer's Women's Health Center, Inc. (the abortion clinic). (Doc. #3, ¶ 30). Plaintiff alleges that the only place to carry on private, non-threatening, pro-life referral counseling with persons approaching or leaving this particular facility is the sidewalk between the parking lot and the doorway. (Doc. #3, ¶31). Plaintiff also alleges that the only place to hand out written referral information about local pro-life resources to the people entering and leaving this abortion facility is on the sidewalk. (Doc. #3, ¶ 32). Plaintiff alleges that on October 21, 1999, and a number of times thereafter, he sought to perform his services as a pro-life referral counselor on the sidewalk and parking lot. (Doc. #3, ¶34). Plaintiff alleges that because of his activities he was unlawfully threatened with physical removal and intimidated by defendants, acting through a armed Fort Myers policeman, and prevented from providing his services at the abortion facility. (Doc. #3, ¶¶ 35, 36). Plaintiff estimated such violations had occurred 50 times per week (Doc. #3, ¶ 40), and alleges that he continues to reasonably fear such conduct by defendants if he sought to

perform his services in the future. (Doc. #3, ¶ 37).

III. Legal Arguments

The Freedom of Access to Clinic Entrances Act of 1993, 18 U.S.C. §248 (c), provides civil remedies for persons wronged by the prohibited conduct outlined in § 248 (a)(1). [1] In Cheffer v. Reno, 55 F.3d 1517 (11th Cir. 1995), the Court upheld the constitutionality of FACE, rejecting a number of constitutional challenges brought by anti-abortion activists. Now that the statute has been upheld, plaintiff seeks to bring his anti-abortion counseling within the protection it affords.

Raney v. Aware Woman Center For Choice, Inc., 224 F.3d 1266 (11th Cir. 2000), held that "A FACE Act action may be brought 'only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . . .'" Id. at 1268; citing, 18 U.S.C. § 248(c)(1)(A) (emphasis in original)." Raney noted that the statute defines "facility" to include "a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located. ." Id. at page 1268; citing 18 U.S.C. § 248 (e)(1) (internal quotations omitted). Raney concluded that "[t]he 'reproductive health services' protected under the statute must be provided 'in a hospital, clinic, physicians office, or other facility . . . .'" Id. at 1268-69; citing, 18 U.S.C. § 248 (e)(5). Raney stated:

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[1] 18 U.S.C. §248(a)(1) provides that whoever by "force or threat of force or by physical obstruction, intentionally injures,. . . any class of persons from, obtaining or providing reproductive health services . . . shall be subject to penalties.

> By requiring that the person bringing a FACE action be seeking or providing reproductive health services in a facility, Congress recognized the difference between trained professionals who work in credentialed facilities and unregulated volunteer counselors who are not attached to recognized providers of reproductive healthcare.

Id. at 1269.

Plaintiff alleges that the sidewalk in front of the abortion clinic constitutes part of the facility; therefore, his pro-life counseling services are covered by FACE. The Court disagrees. Contrary to plaintiff's argument, Cheffer v. Reno, 55 F.3d 1517 (11th Cir. 1995), did not establish that "the route traveled to the entrances of abortion clinics is part of interstate commerce and thus must be open to the public." (Doc. #3, ¶ 10). In Raney, the Eleventh Circuit stated that on each of the incidents plaintiff was "standing on a sidewalk outside of the Woman Center clinic. He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services which the FACE Act protects access." Raney v. Aware Woman Center for Choice, Inc., 224 F.3d at 1269.

Accordingly, it is now

ORDERED:

1. Defendant Babyack's Motion to Dismiss (Doc. #7) is **GRANTED**; Defendant Larry Hart's Motion to Dismiss (Doc. #18) is **GRANTED;** and Defendants Charles Wilson and Janet Reno's Dispositive Motion to Dismiss or, in the Alternative, for a More Definite Statement (Doc. #40) is **GRANTED** as to the Motion to Dismiss and **DENIED** as to the Motion for More Definite Statement.

2. Plaintiff's Amended Complaint (Doc. #3) is **DISMISSED with prejudice** as to the defendants Larry Hart, Justice Charles Wilson, Attorney-General Janet Reno and Jill Babyak. Since the Amended Complaint fails to state a legal claim, it is also dismissed as to former-President William J. Clinton.

3. The Clerk is **DIRECTED** to enter a Judgment dismissing the case with prejudice and close the file.

DONE AND ORDERED at Ft. Myers, Florida this 22nd day of March, 2001.

/s/
JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record
Diane Gosser, Courtroom Deputy Clerk
Donna Howard, Judicial Assistant

APPENDIX B

UNITED STATES COURT of APPEALS
Eleventh Circuit
56 Forsythe Street, N.W.
Atlanta, Georgia 30303

Thomas K. Khan
Clerk

In replying Give Number
Of case and Names of
Parties

April 09, 2001

Christopher F. Sapp
Attorney at Law
Post Office Box 1012
Lehigh Acres, Fl 33970

RE: 01-11774-J Ray Sienkiewicz v. Larry Hart
DCDKT NO.: 00-00057 CV-FTM-29

THIS APPEAL IS GOVERNED BY MORE STRINGENT PROCEDURES FOR REQUESTING EXTENSIONS OF TIME TO FILE BRIEFS AND RECORD EXCERPTS IN CIVIL APPEALS. NEW PROCEDURES ALSO PROVIDE FOR DISMISSAL WITHOUT FURTHER NOTICE IN CIVIL APPEALS WHEN A BRIEF OR RECORD EXCERPTS IS NOT FILED OR CORRECTED WITHIN THE TIME PERMITTED. PLEASE SEE ENCLOSED NOTICE AND REVISED RULES.

The referenced case was docketed in this court on April 5, 2001. Please use the appellate docket number n above when making inquiries. An appeal may be dismissed for failure to comply with the Federal Rules of Appellate Procedure and the rules of this court. Motions for extensions of time to file a brief are frowned upon by the court.

Pursuant to 11th Cir. R. 12-1, the record on this appeal was deemed completed and filed on the date the appeal was docketed in this court. Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF AND RECORD EXCERPTS BE SERVEDAND FILED WITHIN FORTY (40) DAYS FROM THE DATE THE APPEAL WAS DOCKETED IN THIS COURT. This is the only notice you will receive concerning the due date for filing briefs and record excerpts. (In cross-appeals pursuant to Fed.R.App.P.28(h), the party who first files a notice of appeal is the appellant unless the parties otherwise agree.)
See Fed.R.App.P. 28, 30, 31 and 32, and the corresponding circuit rules, for further information on preparing briefs and record excerpts.

A current copy of the district court docket sheet, which shows papers comprising the record, is available from the district court clerk. Counsel or parties are requested to use the district court docket sheet and their own file copies of court papers in preparing the brief and record excerpts. Counsel or parties may also review the record at the office of the district court clerk. Upon notice that all appellee's briefs have been filed, the record will be promptly sent to this office by the district court clerk.

Counsel participating in this appeal should complete and return the enclosed appearance form within fourteen (14) days [11th Cir.R. 46-1]. Only counsel who enter an appearance will be noted on the docket. Persons appearing pro se need not file an appearance form.

11th Cir.R. 33-1(a)(1) requires appellant to file "with the clerk of the court of appeals, with service on all other parties, an original and two copies of a completed Civil Appeal Statement within 10 days after filing the notice of appeal in the district court." Another Civil Appeal Statement is enclosed for

appellant's use. [Also see 11th Cir. R.33-1(b)(1) for portions of the record which must accompany the Civil Appeal Statement.]

MEDIATION. If a Civil Appeal Statement is required to be filed, your appeal and all related matters will be considered for mediation by the Circuit Mediation Office. The mediation services are free and the mediation process is confidential. You may confidentially request mediation by calling the Circuit Mediation Office at 404-335-6260 (Atlanta) or 813-301-5530 (Tampa) or 305-536-3005 (Miami. See 11th Cir.R. 33-1.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: April Richards / by cm
(404) 335-6179

Encl.